

AGENDA ITEM SUMMARY

REGULAR MEETING DATE: July 27, 2011

AGENDA ITEM TITLE: A Resolution of the Board of County Commissioners of Pitkin County, Colorado Authorizing the Filing of a Statement of Opposition to the Crystal River Project (a/ka/ “West Divide Project”) as Proposed by the Colorado River Water Conservation District and West Divide Water Conservancy District

STAFF RESPONSIBLE: John Ely

ISSUE STATEMENT: This is an informal resolution to authorize the filing of Pitkin County’s Statement of Opposition to the Crystal River Project, as proposed by the Colorado River Water Conservation District and West Divide Water Conservancy District in their application to the water court.

BACKGROUND: The Colorado River Water Conservation District and the West Divide Water Conservancy District (the “Districts”) currently hold a large assemblage of conditional water rights in the Crystal River drainage that have been in existence since the 1950s.

The conditional water rights relate to what is generally referred to as the West Divide Project (the “Project”). The purpose of the Project was to export water from the Crystal River to the Divide and Mamm Creek drainages in Garfield County. There, the water would be used to irrigate agricultural lands and be available for municipal and industrial purposes primarily associated with the development of oil shale and supplying water to the communities that would grow around that activity.

The Project proposed construction of five reservoirs and many miles of ditches, canals and siphons to store and transport the water. Three reservoir sites were located in the Crystal drainage at Redstone, Placita and Yank Creek, a tributary of Thompson Creek.

In 1956 the Project was included in the Colorado River Storage Project Act as a potential part of the overall management of water within the Colorado basin by the federal government. The water rights associated with the Project were filed on by the Colorado River District and adjudicated in 1958. The West Divide Water Conservancy District was established in 1964 to assist in the administration of the potential water resources. Every six years since 1958 the Colorado River District and the West Divide Conservancy District have filed diligence applications with the Colorado water court to maintain the conditional rights of the Project.

Apart from the diligence applications, in which the Districts have repeatedly and successfully sought to demonstrate that they are diligently pursuing work to realize the Project, it is difficult to ascertain if any onsite work has ever actually been undertaken.

The federal government withdrew its support for the Project in 1982 determining that the potential cost and benefit of the Project did not justify its completion as part of the Colorado River Storage Project Act. However, the Districts have persisted in maintaining the Project and associated water rights to the present time in the hope that the water rights may be utilized in some useful manner. Most recently, the Districts requested that Wilderness Workshop amend its Hidden Gems proposal to accommodate the construction of one of the proposed reservoirs.

The scope of the conditional rights in the Crystal River Valley is significant. The Redstone Reservoir is approximately 129,000 acre feet, the Placita Reservoir is approximately 62,000 acre feet and the Yank Creek Reservoir is approximately 14,000 acre feet. The Avalanche Canal is decreed for 1000 cfs (cubic feet per second of flow), and the Four-Mile Canal which travels out of the drainage into Divide Creek is decreed for 818 cfs. By comparison, Ruedi Reservoir is 100,000 acre feet, Paonia Reservoir is 15,000 acre feet and the flow in the Crystal River in the second half of May this year at Avalanche Creek was approximately 500 cfs.

Since the drought of 2002, continuing old conditional water rights has been met with increased scrutiny by the State Water Engineer. Further, recent Supreme Court decisions have emphasized that conditional water rights will probably not survive if the projects they are associated with are too speculative in nature.

The inherent absurdity of a reservoir 30% larger than Ruedi being located on Redstone Boulevard has led many in the past to simply dismiss the likelihood of such a structure or project ever being built. However, it is possible in some cases, for dams and reservoirs to be relocated within the same drainage. Also, since the drought of 2002 has accentuated the vulnerability of current statewide water planning to climate change, the value of viable storage sites has increased. Although the Districts neither appear to have the ability or inclination to develop the Project, the right could be transferred to an entity that might actually construct the facilities.

Perhaps as a result of opposition to the existing water rights or in recognition that obtaining a continued diligence decree for these rights would be difficult or impossible, the Districts have dramatically downsized the Project. In fact, the project as currently proposed looks nothing like the previously proposed project.

The Colorado River District's press release describes these changes. Briefly, the Redstone Reservoir is to be eliminated and the Placita Reservoir is to be reduced to 4000 acre feet and potentially moved upstream to the vicinity of Bogan Flats. The Yank Creek Reservoir is to be reduced to 5000 acre feet and the Avalanche Canal reduced to a flow of 250 cfs. Diversion of water to Divide Creek and Mamm Creek is to be eliminated.

Although this is significant progress in addressing the health of the Crystal River and concerns of local residents, the correct litmus for evaluating the new proposed project is not how much smaller it is than the original but whether, as proposed, it is appropriate in size, location, scope, practicability, need and likelihood of actual completion.

The only stated purpose for the new project made to date is for hydroelectric power generation and stream management on the lower Crystal River. Given the reduced size of the Placita Dam and the Yank Creek Dam it is difficult to imagine the viability for hydroelectric power generation. Whether or not hydroelectric power generation is part of the new Avalanche Canal or Four-Mile Canal is not clear. Further, it is also difficult to imagine how stream management of low flows on the Crystal can be accomplished with reservoirs of the new size given the fact that current diversions that deplete the river are not satisfied to their decreed amounts. Estimates are that 13,000 acre feet would be needed to meet the current irrigation shortages associated with the lower Crystal River leaving none available from the proposed reservoirs for stream flow. At best, management of these reservoirs for this purpose would see widely fluctuating water levels if the reservoir at Yank Creek could be filled at all.

The Districts' filed their application in the water court for a finding of reasonable diligence on May 31, 2011 under case number 11CW93. For the Districts to obtain a diligence decree they must, at a minimum, demonstrate that they can and will bring the new project to fruition in a reasonable time. It is difficult to see how they would be able to achieve this goal. Further, there is no security that the new plan will not continue to change through time. For these reasons and the potential for the right to develop the Project to transfer to a more capable entity, it is in the best interest of the citizens of Pitkin County for the County to file a Statement of Opposition to the River Districts' application.

The Healthy Rivers and Streams Fund Board has reviewed this matter and unanimously recommends that a Statement of Opposition be filed.

The Statement of Opposition serves to place the applicants on strict proof with respect to each element of the claims set forth in their application, including but not limited to the following:

- i. Whether Applicants' efforts to apply the subject water rights to a beneficial use are sufficient to warrant a finding of reasonable diligence;
- ii. Whether the subject water rights are speculative, in whole or in part;
- iii. Whether the water can and will be diverted, stored, exchanged, or otherwise captured and controlled and will be beneficially used;
- iv. Whether diversions can and will be completed with diligence and within a reasonable time; and
- v. Whether application of the subject water rights to a beneficial use is

sufficient to make a portion of the water rights absolute.

RECOMMENDED BOCC ACTION: Adopt resolution authorizing the filing of a statement of opposition to the Crystal River Project as proposed by the Colorado River Water Conservation District and West Divide Water Conservancy District in their application to the water court under case number 11CW93 and reserve sufficient funds for this opposition.

ATTACHMENTS:

Resolution

Colorado River Conservation District Press Release

West Divide Project Vicinity Map

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO AUTHORIZING
THE FILING OF A STATEMENT OF OPPOSITION TO THE
WEST DIVIDE PROJECT AS PROPOSED BY THE
COLORADO RIVER WATER CONSERVATION DISTRICT
AND WEST DIVIDE WATER CONSERVANCY DISTRICT**

RESOLUTION #2011-_____

RECITALS

1. The Colorado River Water Conservation District and the West Divide Water Conservancy District (the “Districts”) currently hold a large assemblage of conditional water rights in the Crystal River drainage that have been in existence since the 1950s which relate to what is generally referred to as the West Divide Project (the “Project”).
2. The purpose of the Project was to export water from the Crystal River to the Divide and Mamm Creek drainages in Garfield County to be used to irrigate agricultural lands and be available for municipal and industrial purposes primarily associated with the development of oil shale and supplying water to the communities that would grow around that activity.
3. The water rights associated with the Project were filed on by the Colorado River District and adjudicated in 1958. The West Divide Water Conservancy District was established in 1964 to assist in the administration of the potential water resources. Every six years since 1958 the Colorado River District and the West Divide Conservancy District have filed diligence applications with the Colorado water court to maintain the conditional rights of the Project.
4. Despite a loss of support for the Project from the federal government, increased scrutiny by the State Water Engineer and recent Supreme Court decisions that have emphasized that conditional water rights will probably not survive if the projects they are associated with are too speculative in nature, the Districts, while having dramatically downsized the original Project, have persisted in maintaining the Project and associated water rights to the present time in the hope that the water rights may be utilized in some useful manner.
5. The scope of the conditional rights in the Crystal River Valley is significant and the County has serious concerns as to whether as proposed, the Project is appropriate in size, location, scope, practicability, need and likelihood of actual completion. The Districts do not appear to have the ability or inclination to develop the Project.
6. The Districts filed an application for a finding of reasonable diligence in the water court on May 31, 2011 under case number 11CW93.
7. Pitkin County owns numerous surface water rights, water storage rights, and groundwater rights in the Roaring Fork River basin that may be materially injured by the granting of the application.

8. The BOCC finds it necessary for the immediate preservation of the public health, safety and welfare of the citizens of Pitkin County to authorize the filing of a Statement of Opposition to the application and to reserve sufficient funds for this opposition.

9. The Healthy Rivers and Streams Fund Board has reviewed this matter and unanimously recommends the filing of a Statement of Opposition.

NOW THEREFORE, be it resolved that the Pitkin County Board of County Commissioners, of Pitkin County Colorado, authorizes the filing of a Statement of Opposition to the West Divide Project as proposed by the Colorado River Water Conservation District and the West Divide Water Conservancy District in their application to the water court under case number 11CW93 and to reserve sufficient funds for this opposition.

INTRODUCED, FIRST READ AND ADOPTED ON THE 27TH DAY OF JULY 2011.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS OF
PITKIN COUNTY, COLORADO**

Jeanette Jones
Deputy Clerk

Rachel E. Richards, Chairwoman
Date: _____

APPROVED AS TO FORM:

John M. Ely
County Attorney

Jon Peacock
County Manager

Subject:

FW: Colorado River District acts on West Divide rights



CRD Board acts to abandon large transbasin West Divide Project storage rights

The Colorado River District Board of Directors voted April 19, 2011, to abandon most of the Crystal River conditional water rights associated with the West Divide Project, a water development project envisioned in the 1960s that would have been a transbasin diversion moving water from the Crystal River to the West Divide area north of the Colorado River for irrigation and oil shale development.

The limited rights that the Colorado River District seeks to retain will change the focus of the project from one that would have benefitted the Colorado River Valley to one focused on potentially helping the Crystal River drainage with late season flows and create the potential for hydropower development.

The West Divide Project also contained many components located in the West Divide area. These water rights will be maintained to benefit the original West Divide service area, but using in-basin water supplies.

Crystal River components of the original water rights included two large reservoirs on the Crystal River, the 128,728.27 acre-foot Osgood Reservoir which would have inundated the village of Redstone and the 58,009 acre-foot Placita Reservoir farther upstream. Under today's Colorado River District Board direction, water rights to Osgood Reservoir will be abandoned completely. At the same time, the River District will seek to maintain conditional rights for a small, 4,000 acre-foot Placita Reservoir that could in the future help with in-basin, low-flow issues in the Crystal River in late summer.

In the Colorado water rights system, conditional water rights act as priority system placeholders for projects to be developed in the future. Conditional water rights holders must prove to the water court every six years that progress is being made to develop a project, a process known as diligence. The West Divide Project water rights face a diligence filing on May 31. The moves today were made in concurrence with the West Divide Board.

The original West Divide Project was approved by Congress in 1966 as part of the historic Colorado River Storage Project Act that led to the construction of the Animas-LaPlata Project and Ridgway Reservoir, among others. But the Bureau of Reclamation subsequently judged the West Divide project unfeasible on a cost-benefit basis, and it was never granted federal funds. Despite the promise of federal funding, the Colorado River District reconfigured the project and its water rights over the years in anticipation that one day it could be valuable to the Crystal, Roaring Fork and Colorado River valleys.

The Colorado River District filed for the project's original water rights in 1957. They were adjudicated by the water court in 1958 and 1965, dating to a River District era where one of its main roles was to file water rights that would later become Reclamation projects and to help create water conservancy districts to be beneficiaries of those projects.

Two large dam sites were originally decreed on the Crystal River: Osgood and Placita. Most likely, only one would have ever been built. Each was associated with an alternate route to deliver water to the West Divide mesa and areas west in western Garfield County. From Osgood, a canal system was to deliver water down the Crystal and Roaring Fork River

valleys then through a tunnel to the West Divide area. From Placita, a series of tunnels and canals would have conveyed water to the west side of McClure Pass into the Muddy Creek drainage in the Gunnison basin and then tunnelled to the West Divide area. But only the conveyance elements for Osgood were ever decreed.

Here is what the River District Board approved:

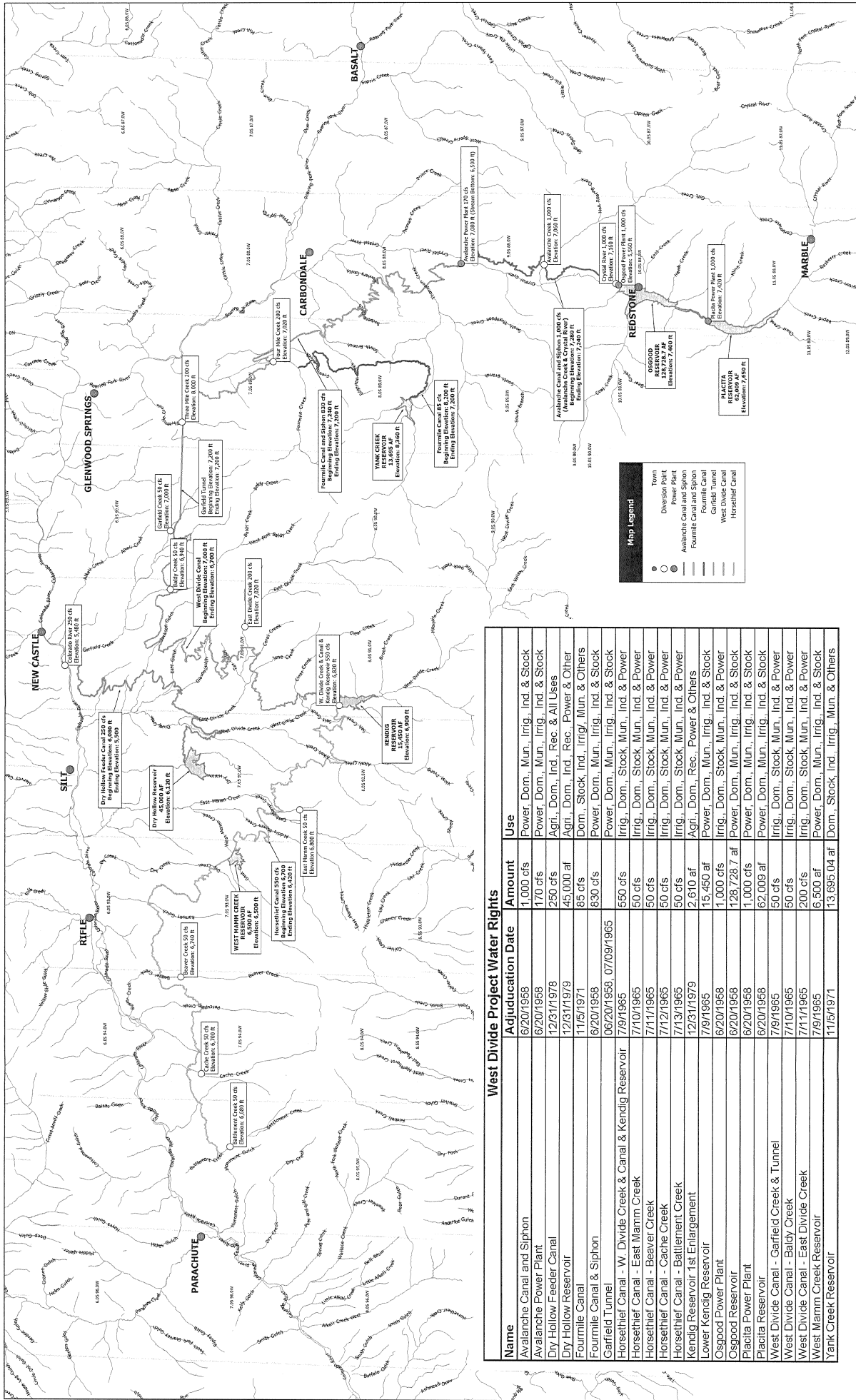
- Abandon the 128,728.27 acre-foot Osgood Reservoir
- Abandon the 1,000 cubic feet per second (cfs) Osgood Power Plant
- Abandon the 830 cfs Fourmile Canal and Siphon diversion point on the Crystal River
- Reduce the 62,009 acre-foot Placita Reservoir to 4,000 acre feet
- Reduce the 1,000 cfs Placita Power Plant to 150 cfs
- Reduce the 1,000 cfs Avalanche Canal and Siphon to 250 cfs
- Reduce the 13,695 acre-foot Yank Creek Reservoir to 5,000 acre feet
- Maintain the 85 cfs Fourmile Canal associated with Yank Creek Reservoir
- Reduce the Fourmile Creek diversion to the Fourmile Canal and Siphon to 50 cfs
- Reduce the 200 cfs Threemile Creek Diversion to Fourmile Canal and Siphon to 50 cfs

For more information, contact Jim Pokrandt at the Colorado River District, 970-945-8522, jpokrandt@crwcd.org.

Jim Pokrandt

Colorado River District
970.945.8522 x 236
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Email secured by Check Point



West Divide Project Water Rights			
Name	Adjudication Date	Amount	Use
Avalanche Canal and Siphon	6/20/1958	1,000 cfs	Power, Dom., Mun., Irrig., Ind. & Stock
Avalanche Power Plant	6/20/1958	170 cfs	Power, Dom., Mun., Irrig., Ind. & Stock
Dry Hollow Feeder Canal	12/31/1978	250 cfs	Agri., Dom., Ind. Rec. & All Uses
Dry Hollow Reservoir	12/31/1979	45,000 af	Agri., Dom., Ind. Rec., Power & Other
Fournile Canal	11/5/1971	85 cfs	Dom., Stock, Ind., Irrig., Mun. & Others
Fournile Canal & Siphon	6/20/1958	830 cfs	Power, Dom., Mun., Irrig., Ind. & Stock
Garfield Tunnel	06/20/1958, 07/09/1965	550 cfs	Power, Dom., Mun., Irrig., Ind. & Stock
Horseshief Canal - W. Divide Creek & Canal & Kendig Reservoir	7/9/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
Horseshief Canal - Beaver Creek	7/10/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
Horseshief Canal - Cache Creek	7/11/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
Horseshief Canal - Battlement Creek	7/12/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
Kendig Reservoir 1st Entanglement	7/13/1965	2,610 af	Agri., Dom., Rec., Power & Others
Lower Kendig Reservoir	12/31/1979	15,450 af	Power, Dom., Mun., Irrig., Ind. & Stock
Osgood Power Plant	7/9/1965	1,000 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
Osgood Reservoir	6/20/1958	128,728.7 af	Power, Dom., Mun., Irrig., Ind. & Stock
Placita Power Plant	6/20/1958	1,000 cfs	Power, Dom., Mun., Irrig., Ind. & Stock
Placita Reservoir	6/20/1958	62,009 af	Power, Dom., Mun., Irrig., Ind. & Stock
West Divide Canal - Garfield Creek & Tunnel	7/9/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
West Divide Canal - Baldy Creek	7/10/1965	50 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
West Divide Canal - East Divide Creek	7/11/1965	200 cfs	Irrig., Dom., Stock, Mun., Ind. & Power
West Mamm Creek Reservoir	7/9/1965	6,500 af	Power, Dom., Mun., Irrig., Ind. & Stock
Yank Creek Reservoir	11/5/1971	13,695.04 af	Dom., Stock, Ind., Irrig., Mun. & Others

WEST DIVIDE PROJECT
VICINITY MAP

0 10 mi



Date: March 8, 2011

Map By: T.B.
File Name: WestDivideVicinity2010.mxd